

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LAWRENCE HELLER,

Petitioner,

v.

**2:08 CV 107
(Maxwell)**

DOMINIC A. GUTIERREZ,

Respondent.

ORDER

On November 3, 2008, *pro se* Petitioner Lawrence Heller filed a Petition For Writ Of Habeas Corpus pursuant to 28 U.S.C. § 2241 raising claims regarding the conditions of his confinement at FCI Morgantown. Additionally, the Petitioner alleges that, during his criminal proceedings, he was denied his Fifth and Sixth Amendment rights and that his conviction and sentence were the result of ineffective assistance of counsel.

The case was referred to United States Magistrate Judge David J. Joel for initial review and report and recommendation in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

On April 21, 2009, Magistrate Judge Joel issued a Report And Recommendation wherein he recommended that the Petitioner's § 2241 Petition be denied. In his Report And Recommendation, Magistrate Judge Joel provided the parties with ten (10) days from the date they were served with a copy of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no

objections to Magistrate Judge Joel's April 21, 2009, Report And Recommendation have been filed and that this matter is now ripe for review. An April 23, 2009, docket entry in the above-styled civil action reveals that, on April 22, 2009, service of the Petitioner's copy of the Report And Recommendation was accepted.

Pursuant to 28 U.S.C. § 636(b)(1)©, this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Upon consideration of Magistrate Judge Joel's April 21, 2009, Report and Recommendation, and having received no written objections thereto, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge David J. Joel on April 21, 2009, (Docket No. 7), be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Petition For Writ Of Habeas Corpus pursuant to 28 U.S.C. § 2241 (Docket No. 1) be, and the same is hereby, **DENIED**.

It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is

further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within sixty (60) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit. The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: February 23, 2010

/S/ Robert E. Maxwell
United States District Judge